

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARINGS ON
ARM 12.9.602, 12.9.604, 12.9.606,	)	PROPOSED AMENDMENT AND
12.9.615, 12.9.701, 12.9.702, 12.9.703,	)	ADOPTION
12.9.704, 12.9.705 and 12.9.706, and	)	
adoption of NEW RULE I regarding	)	
upland game bird release and habitat	)	
enhancement programs	)	

TO: All Concerned Persons

1. On April 2, 2012 at 6:00 p.m. the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Region 4 office located at 4600 Giant Springs Road, Great Falls, Montana to consider the proposed amendment and adoption of the above-stated rules.

On April 3, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks Region 5 office located at 2300 Lake Elmo Drive, Billings, Montana to consider the proposed amendment and adoption of the above-stated rules.

On April 4, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks Region 3 office located at 1400 South 19th Avenue, Bozeman, Montana to consider the proposed amendment and adoption of the above-stated rules.

On April 4, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks Headquarter office located at 1420 East 6th Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

On April 5, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks Region 7 office located at 352 I-94 Business Loop, Miles City, Montana to consider the proposed amendment and adoption of the above-stated rules.

On April 9, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks Region 1 office located at 490 North Meridian Rd., Kalispell, Montana to consider the proposed amendment and adoption of the above-stated rules.

On April 9, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks Region 2 office located at 3201 Spurgin Road, Missoula, Montana to consider the proposed amendment and adoption of the above-stated rules.

On April 10, 2012 at 6:00 p.m. the department will hold a public hearing at the Fort Peck Fish Hatchery office located at 277 Highway 117, Fort Peck, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the department no later than March 23, 2012, to advise us of the nature of the accommodation that you need. Please contact Coleen Furthmyre, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail cfurthmyre@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.9.602 REQUIREMENTS OF PROJECTS INVOLVING PHEASANT RELEASES (1) and (1)(a) remain the same.

(b) ~~a minimum of~~ no more than 40% of the birds released may in a release ~~under this program must be~~ cocks;

(c) all birds must be fully feathered; appear healthy, uninjured, and have the ability for flight at the time of the release;

(d) applications for releases must be postmarked ~~prior to May~~ by January 15, and all releases must be made between August 1 and September 15;

(e) groups or individuals releasing birds on property they do not own must provide the department with written documentation from the landowner giving permission for the release, ~~and~~ acknowledging the requirements of allowing free public hunting, and ~~to~~ notifying the department whom payment should be made;

(f) releases may not be made in Fergus, Richland, or Roosevelt counties in order to provide a potential basis for evaluating the success of the program;

(g) and (h) remain the same.

(i) within one mile of each release site, habitat must be available that consists of:

(i) at least 10% ~~permanent~~ effective winter cover ~~as described in ARM 12.9.615(2);~~

(ii) 25% idle cover such as undisturbed residual vegetation 10 or more inches high; and

(iii) 10% food sources, such as cultivated grain, ~~to be considered for authorization;~~

(i) ~~conservation reserve grass-legume planting may be considered as idle cover provided the planting has not been mowed or grazed by livestock in the preceding twelve-month period.~~

(j) and (k) remain the same.

(l) the department reserves the right to inspect the pheasant raising facilities and sample birds; ~~if the number of applicants, private or commercial, applying to release pheasants cannot be accommodated by program funding, distribution of funds will take place in the following manner:~~

~~(i) if funding is insufficient to allow each applicant to release up to 200 pheasants, the department will conduct a random drawing to determine who will receive release permits;~~

~~(ii) if funding will allow each individual applicant, private or commercial, to release up to 200 pheasants, the department shall issue a permit to each applicant;~~

~~(iii) if there is sufficient funding for each applicant, applicants, by submitting a second application, will be allowed to release up to 200 additional pheasants. This same process will be followed until funding will no longer cover remaining applicants. At that time, the department will conduct a random drawing for the remaining releases.~~

(m) the department reserves the right to refuse to stock or pay for any pen-reared pheasants that are observed to be in poor condition or health prior to or during release activities;

(~~m~~n) ~~habitat~~ sites will be inspected by department personnel to determine the ~~authorized~~ number of birds that may be released. This number will be determined by:

(i) the ~~availability of~~ required habitat components ~~(winter cover, idle cover, food sources)~~ that occupies the fewest acres within one mile of the ~~release~~ site release; and

(ii) the number of birds that the area will support assuming one bird will require approximately three acres of habitat within a one-mile radius of the release site and there is a 60% mortality rate of released birds;

(~~n~~o) banding of birds will ~~may~~ be required in specified study areas and will be done by the department prior to release;

(p) pen-reared pheasants may be assessed for overall health and general condition prior to and during release activities and the department maintains the right to refuse authorization of any pheasant release or payment for released pheasants if pheasants appear unhealthy prior to or during the release activity;

(~~e~~q) all releases must be verified at the time of release by a department employee ~~representative~~ who will submit the verification form signed by the landowner ~~to the program coordinator~~ for payment to the landowner or their designee;

(~~p~~r) sites may be stocked for a period of five consecutive years. pheasant releases may occur annually within a five-year period starting from the first release. If a viable population is not established during that period, ~~t~~The department ~~may~~ fund additional releases for one additional five-year period if habitat improvements are established that address factors limiting pheasant numbers. will no longer consider the site as being capable of supporting populations and will not fund any additional releases unless habitat changes are made that would make the site more suitable for the establishment of a viable population;

(q) in the case of extreme weather conditions, the department will evaluate the area pursuant to ARM 12.9.615 to determine if the department will authorize the continued stocking of sites currently being used for an additional five years.

(2) For good cause shown, the department may waive any requirement listed in (1). The department may authorize the release of up to 200 pheasants per application.

(3) If the department is unable to fund all eligible applications, the department may:

(a) fund one eligible application per applicant;

(b) fund an equitable number of eligible applications for each applicant; and

(c) conduct a random drawing.

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.604 PAYMENT BY DEPARTMENT (1) The department will pay authorized pheasant release projects for live birds pheasants that are ten weeks of age or older and released in compliance with all the provisions of this subchapter at a rate established by the department surveying NPIP-certified hatcheries or game bird growers in Montana and surrounding states or through the solicitation of bids from interested parties equivalent to the average cost of ten-week-old pheasants being raised and offered for sale to the public by NPIP-certified hatcheries or game bird growers in Montana. ~~The price will be determined by surveying hatcheries and growers in March of each year. If circumstances prevent the department from timely release of birds contracted for release at ten weeks of age, the department will cover the additional expenses incurred by the hatchery or grower on behalf of the department.~~

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.606 DEFINITIONS (1) "Upland game bird release program" means the programs established by 87-1-246 through 87-1-248, MCA, for both the compensation to eligible participants for the rearing and release of upland game birds ring-necked pheasants, or the trapping and release of wild upland game birds, authorized by the department in order to establish viable upland game bird populations, and the compensation to eligible participants for the trapping and release of wild upland game birds in order to establish viable upland game bird populations.

~~(2) "Upland game bird habitat enhancement program" means the programs established by 87-1-246 through 87-1-248, MCA, for cost-sharing to eligible cooperators for the establishment of suitable habitats to enhance the establishment of viable upland game bird populations.~~

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.615 SUPPLEMENTAL FEEDING (1) The department may enter into agreements with individuals, organizations, or other agencies to provide supplemental feeding for upland birds pheasants during extreme winter weather events conditions in Sheridan, Daniels, and Roosevelt counties. Supplemental feeding will be considered on a case-by-case basis. ~~The threat posed to the upland~~

game bird population will be evaluated on a county-wide basis. The department will use the following guidelines to determine when supplemental feeding should occur:

(2) The department will authorize supplemental feeding when

~~(a) a severe winter storm where 90% or more of the naturally occurring food sources are covered with snow and ice, and conditions are such that the upland birds pheasants are unable to obtain food for a period of five or more days; or~~

~~(b) the affected area is large enough that it presents a serious threat to the viability of the population within the county.~~

(23) Supplemental feeding will be done only within areas 1/4 miles or closer to effective winter cover. Winter cover includes but is not limited to the following examples:

~~(a) minimum three row uncultivated shelterbelt comprised of trees five years or older;~~

~~(b) minimum four row uncultivated shelterbelt comprised of shrubs and trees;~~

~~(c) woody drainages;~~

~~(d) river or stream courses ungrazed by livestock for at least the previous 12 months; and~~

~~(e) cattail sloughs ungrazed by livestock for at least the previous 12 months.~~

~~(3) and (4) remain the same but are renumbered (4) and (5).~~

(56) No feeding operations may begin after March 30. will terminate no later than March 31.

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.701 PROJECT APPLICATIONS (1) through (1)(d) remain the same.

(e) the legal description of the project site area, including the habitat site and project access area;

(f) clear evidence of landowner's permission if the project site area is not owned by the applicant;

(g) the number of acres included in the proposed enhancement project area, including the habitat site and the project access area;

(h) through (i) remain the same.

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.702 PROJECT REQUIREMENTS (1) Projects must meet the following requirements before the department may authorize participation in the program:

(a) projects must be designed to establish, or improve, or protect necessary habitat components such as nesting cover, effective winter cover, brood habitat, and feeding areas food sources;

(b) projects must should be located within a suitably sized area, normally on a minimum of 100 contiguous acres and shelterbelts cannot be located within 400 feet of occupied buildings or outbuildings used by livestock but may be considered on lands less than 100 acres if land with guaranteed public access is within the project area of influence. All habitat components need not be under the ownership

of the applicant if other of the necessary habitat components (~~nesting cover, winter cover, feeding areas~~) are present at suitable distances on adjacent ownerships;

(c) all projects ~~on private land~~ must be implemented through lease, conservation easement, or by department contract using upland game bird habitat enhancement program cost-sharing with the private landowner, public land management agency, or other conservation partner project sponsor, ~~or a federal cost-share program~~;

(d) ~~projects which require the department to purchase fee title to lands will not be considered~~;

(~~ed~~) all projects ~~on private lands~~ must be open to public hunting for upland game birds for the duration of the project as defined in the contract or work plan. Reasonable use limitations on numbers of hunters and areas to be hunted may be allowed; however, user fees may not be charged. Projects located within a leased or commercial hunting operation will not be considered.

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.703 PROJECT REVIEW AND APPROVAL (1) Enhancement activities on public and private lands will be reviewed and prioritized for funding based on:

(a) current species distribution and the potential to increase numbers of upland game birds;

(2) ~~Project proposals will be evaluated before being accepted by the department using the following criteria:~~

(a) and (b) remain the same but are renumbered (b) and (c).

(~~cd~~) ~~the status of adjacent property regarding hunter access and benefits provided upland birds~~ the current habitat characteristics and public access opportunities that comprise the project area of influence;

(d) remains the same but renumbered (e).

(~~ef~~) expected benefits for upland game birds and hunters from the proposed project;

(~~fg~~) additional consideration ~~will~~ may be given to projects that offer:

(i) ~~offer~~ longer initial contract terms, renewed terms of expired contracts, or additional a higher amount of landowner cost-share; or

(ii) ~~offer~~ land with special or unique components (~~such as wetlands~~) for enhancement.

(3) ~~Emphasis will be given to projects on private lands; however, projects on public land will be pursued where opportunities for cooperative cost-share projects exist.~~

(4) ~~Approved projects will be funded on a first come, first served basis.~~

(5) remains the same but is renumbered (2).

(63) Participation in federal farm programs, state agricultural programs, hunter management programs, the hunting access enhancement program, or other programs that provide for habitat or access enhancement does not preclude eligibility for ~~landowners~~ applicants to also enroll property in the upland game bird enhancement program.

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.704 REPORTING REQUIREMENTS (1) Upon notification by the cooperator of project completion as outlined in the contract, department personnel or designee will inspect the project and submit written confirmation of project completion within 60 days to department headquarters. Any person or organization authorized to implement an upland game bird habitat enhancement project must, within 60 days of completion of all authorized activities, file a written report with the department on forms provided by the department. All reports must include the following:

- ~~(a) the number of acres enhanced;~~
- ~~(b) specific enhancement activities accomplished;~~
- ~~(c) species of plantings used;~~
- ~~(d) costs by activity;~~
- ~~(e) any other information deemed relevant by the department and requested on the project report form; and~~

~~(f) verification of on-site inspection by department personnel.~~

~~(2) The department will assist with preparation of reports in the following ways:~~

~~(a) department personnel will develop a monitoring schedule for all habitat enhancement projects; and~~

~~(b) the program coordinator will maintain a copy of regional monitoring plans and annual status of projects monitored and new projects added to the plan.~~

~~(3) The department will compile an annual summary of the birds released under the upland game bird release and pheasant release programs, the release locations, and the associated costs of those releases.~~

~~(4) The department will compile an annual summary of projects undertaken under the upland game bird habitat enhancement program, the types of projects entered into, and the associated costs of those projects.~~

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.705 PAYMENT BY DEPARTMENT (1) The department will ~~compensate individuals or organizations by cost-sharing the actual costs incurred for completed~~ cost share upland game bird habitat enhancement projects as set forth in a contract or work plan. ~~The department's share will be negotiated on an individual project basis for cost-sharing projects.~~ Project expenses derived from applicable cost lists, such as an NRCS standard cost list, may be used to determine project costs and reimbursement payments. In-kind services contributions, such as labor, equipment use, land taken out of production, or the management of public lands for improved upland game bird habitat and upland game bird hunting opportunity, may be used for the programs participants' portion recognized as an applicant's contribution of the cost-share.

~~(a) requests for payment must be accompanied by invoices, receipts or similar proof of expenses;~~

~~(b) all requests for payment must include verification by department personnel that the work for which payment has been requested has been completed; and~~

~~(c) the department will cover no more than 75% of the total cost of any upland game bird habitat enhancement project entered into with a cooperator resulting in improvements on property owned or controlled by that cooperator.~~

(2) The department may compensate individuals, agencies, or organizations for upland game bird habitat protection or enhancement activities accomplished through a lease, up to the fair market value of the lease. ~~The organization or individual will be compensated only if the organization or individual holds title to or leases the specified property.~~

(3) The department may compensate individuals, agencies, or organizations for upland game bird habitat protection or enhancement accomplished through a conservation easement, up to the fair market value of the easement. The organization, agency, or individual will be compensated only if the organization or individual holds title to the specified property.

(4) For qualified upland game bird habitat enhancement projects sponsored by volunteer organizations, the department may reimburse for up to 110% of additional project material costs to encourage program participation. ~~the sponsor for up to 10% of the cost of the project and may cover up to 100% of the cost of the material required for the project.~~

~~(a) requests for payment must be accompanied by invoices, receipts or similar proof of expenses; and~~

~~(b) all requests for payment must include verification by department personnel that the work for which payment had been requested has been completed.~~

(5) The following are costs limitations under the upland game bird habitat enhancement program:

(a) department costs for any project may not exceed \$100,000 without commission authorization, and no project will be funded for more than \$200,000;

(b) department expenses on any project for purchase of buildings or equipment will not exceed \$25,000 and all equipment purchased by the department will remain property of the department; ~~and~~

(c) the department will cover no more than 50% of the cost of wells, pipelines, and roads; ~~and~~

(d) expenditures related to maintenance activities are separate from project costs and are not administered or capped under statute.

(6) All requests for payment must be accompanied by invoices, receipts, or proof of expenses and include verification by department personnel that the work for which payment has been requested has been satisfactorily completed.

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.706 EFFECT OF RULE VIOLATIONS (1) Any person, agency, or organization found in violation of any of the upland game bird enhancement rules will



may be disqualified from further participation in the program, ~~and will be required to reimburse the department for compensation received.~~

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

4. The proposed new rule provides as follows:

NEW RULE I DEFINITIONS (1) "Effective winter cover" means dense woody or herbaceous vegetative component on the landscape that provides upland game birds with thermal and protective cover in proximity to a nearby food source.

(2) "Habitat site" means the area where actual enhancement work will be accomplished, conserved, and maintained.

(3) "Maintenance" means a temporary activity necessary for the upkeep, repair, or enhancement of an existing or intended long-term habitat component as identified in the Upland Game Bird Habitat Enhancement Program contract or work plan.

(4) "Project" means the specific activity on a particular area over a specified period of time that intends to enhance or conserve upland game bird habitats or populations. Expenditures are administered and capped in statute.

(5) "Project area" means those specific acres identified in the contract that includes both the habitat site and project access area. Several projects may occur on a single project area.

(6) "Project access area" mean the legally defined property open to some level of public hunting as defined in a contract.

(7) "Project area of influence" means the land and associated game birds that may affect or may be affected by the habitat enhancement improvement or activity.

(8) "Project types" means the actual activities conducted to enhance upland game bird populations and include, but are not limited to shelterbelts, grazing systems, food plots, nesting cover, upland game bird releases, and supplemental feeding activities.

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

Reasonable Necessity: In 2009, the Upland Game Bird Enhancement Program underwent a legislative performance audit. The audit report concluded that the program lacked a strategic plan and may not reach its full potential. The audit report recommended that a strategic plan be established that identified long-term goals and objectives with performance measurements that align with statutory requirements. Additionally, the audit report identified the need for a citizens' advisory council whose primary purpose was to advise the department on the development of the strategic program plan. The council's final recommendations were articulated in the 2011 strategic plan and adopted by the Fish, Wildlife and Parks Commission. In response to these actions, the department is proposing

amendment and adoption of rules to align with the strategic plan and to provide greater clarity for program implementation.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Laura Geary, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59620-0701; fax 406-444-2452; e-mail fwpwld@mt.gov, and must be received no later than April 13, 2012.

6. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Joe Maurier

Joe Maurier, Director

Department of Fish, Wildlife and Parks

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter

Rule Reviewer

Certified to the Secretary of State February 27, 2012